



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

TJR
Docket No: 3848-00
17 November 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552
(b) SECNAVINST 1910.4B

Encl: (1) DD Form 149 with attachments
(2) Case summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, filed enclosure (1) with this Board requesting, in effect, that his discharge be upgraded.

2. The Board, consisting of Ms. Gilbert, Mr. Pfeiffer, and Mr. Zsalman, reviewed Petitioner's allegations of error and injustice on 14 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations, and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitation and review the application on its merits.

c. Petitioner enlisted in the Navy on 10 January 1955 at the age of 17.

d. During his period of enlistment, Petitioner received nonjudicial punishment (NJP) for using insulting remarks and was convicted by summary court-martial (SCM) of a seven day period of unauthorized absence (UA).

e. On 5 August 1957 Petitioner submitted a written statement in which he admitted to participating in homosexual acts with civilians while on leave. Petitioner noted that he had never engaged in homosexual acts while aboard ship.

f. On 15 August 1957 administrative separation action was initiated by reason of unfitness due to homosexuality. Subsequently, the discharge authority directed an undesirable discharge by reason of unfitness, and on 5 September 1957 Petitioner was so discharged. At the time of his discharge, Petitioner's conduct mark was 2.8.

g. Character of service was often based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. An average of 3.0 in conduct was required at the time of Petitioner's separation for a fully honorable characterization of service.

h. Reference (b) sets forth the Department of the Navy's current policies, standards, and procedures for administratively separating enlisted service members. With regard to homosexuality, reference (b) declares such behavior to be incompatible with Naval Service. It provides Navy and Marine Corps officials with the authority to involuntarily separate those service members who commit a homosexual act or acts. If separated, the service member's discharge and character of service must be based on his or her total performance of duty and conduct. Reference (b) expressly prohibits the issuance of a discharge under conditions other than honorable unless the homosexual act is committed under one of the following circumstances:

- (1) By using force, coercion, or intimidation;
- (2) with a person under 16 years of age;
- (3) with a subordinate in circumstances that violate customary naval superior-subordinate relationships;
- (4) openly in public view;
- (5) for compensation;
- (6) aboard a naval vessel or aircraft; or
- (7) in another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

i. Normally, an individual separated due to homosexuality receives an honorable discharge if there are no aggravating factors and the conduct and overall traits averages are at least 3.0 and 2.8, respectively.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action.

Based upon Petitioner's overall record of service and current Department of the Navy policy as established in reference (b) and its radical departure from the policy which was in effect on 5 September 1957, the date of Petitioner's discharge, the Board concludes that it would be in the interest of justice to retroactively apply the standards of reference (b) to Petitioner's case. Using the standards of reference (b), the Board finds that given Petitioner's final conduct and overall traits averages, relief in the form of recharacterization to general is appropriate.

In view of the foregoing, the Board finds the existence of an injustice warranting the following action.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was issued a general discharge on 5 September 1957 vice the other than honorable discharge actually issued on that date.

b. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

c. That, upon request, the Veterans Administration be informed that Petitioner's application was received by the Board on 27 June 2000.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

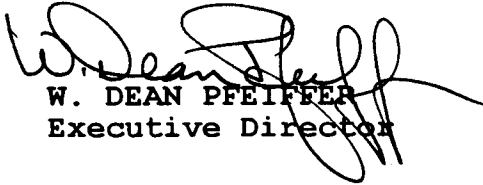
ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulation, Section 723.6(e))

and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Director